S SUBRAMANIAM & ORS

v.

INDERJIT KAUR KARNAIL SINGH & ANOR

HIGH COURT MALAYA, ALOR SETAR
HISHAMUDIN YUNUS J
[ORIGINATING SUMMONS NO: 24-733-96]
5 JUNE 1997

CIVIL PROCEDURE: *Jurisdiction - Whether Court had jurisdiction to hear application for order to partition land*

LAND LAW: *Partition - Whether Court had jurisdiction to hear application to partition land by virtue of ss. 142 and s. 145 of the National Land Code 1965*

LAND LAW: *Partition - Whether co-proprietor holding majority share in land required consent from other co-proprietor(s) to apply to Land Administrator for partitioning*

The plaintiffs and the defendants were co-proprietors of a piece of land of which the plaintiffs held majority shares. The plaintiffs were desirous of partitioning the land and had submitted a plan prepared by a qualified land surveyor, showing how the partition was to be carried out. The plaintiffs had informed the defendants of their intention to apply to the land office to partition the land but the first defendant refused to give consent to the proposal. The plaintiffs applied to the Court pursuant to s. 145(1)(a) of the National Land Code 1965 ('the NLC') for an order that the land be partitioned in accordance with the submitted plan.

At the commencement of the hearing the learned Judge dealt with the issue of whether the Court had jurisdiction to hear the application.

Held:

[1] The Court had no jurisdiction to make the order sought. Section 142 of the NLC has to be read with s. 145(1)(a) of the NLC and is meant only for co-proprietor(s) holding minority shares in the land. The plaintiffs must apply to the Land Administrator or the State Director pursuant to ss. 141A and 142 of the NLC.

[2] There was no requirement under the NLC for a co-proprietor having majority shares in land to obtain the consent of the other co-proprietors.

[3] If the application to partition the land was rejected by the Land Administrator or the State Director, the co-proprietor may appeal to the High Court by way of s. 418 of the NLC.

Case referred to:
Ku Yan Ku Abdullah v. Ku Idris Ku Ahmad & Ors [1991] 3 MLJ 2872 ***(not foll)***

Legislation referred to:
National Land Code 1965, ss. 141A, 142, (1), (e), 145(1)(a), 418

For the plaintiff - Mohd Kamal Mohd Noor; M/s. Jayadeva & Kamal
For the first defendant - Megalai; M/s. Meg & Co.
For the second defendant - In person

JUDGMENT

Hishamudin Yunus J:

This application by the plaintiffs raises the question as to whether a co-proprietor of a piece of land, who is the holder of the majority share in the land, can apply to the Court for the partition of the land pursuant to sub-s. (1)(a) of s. 145 of the National Land Code ('the NLC').

The plaintiffs and the defendants are the co-proprietors of a piece of land known as Surat Putus No. 54667, Bahagian No. 226 Mukim Padang China, Daerah Kulim, Kedah. The plaintiffs hold the majority share while the defendants hold the minority share.

The size of the land is about 26 hectares. The respective shares of the co-proprietors are as follows:

First plaintiff	...	2/10
Second plaintiff	...	2/10
Third plaintiff	...	2/10
Fourth plaintiff	...	2/10
First defendant	...	1/10
Second defendant	...	1/10

Due to some disagreement between the plaintiffs and the first defendant over the management of the land, the plaintiffs are desirous of partitioning the said land so that the first defendant will cease to be a co-proprietor and, instead, will be issued with a separate title for a portion of the land the size of which

shall be in proportion to the extent of her share in the land, with the remaining co-proprietors (ie, the four plaintiffs and the second defendant) continuing to be co-proprietors in respect of the remaining portion of the land.

The plaintiffs submitted a plan to this Court, prepared by a qualified land surveyor, showing how they propose the partition to be carried out.

The plaintiffs had informed the first defendant in writing of their intention to apply to the Land Administrator to have the land partitioned (in the manner as I have just mentioned) but the first defendant had refused to give her consent to the proposal. Hence, purportedly pursuant to s. 145(1)(a) of the NLC, the plaintiffs apply to this Court for an order that the land be partitioned in accordance with the submitted plan.

The defendants do not object to this application.

When the matter came before me for hearing, I posed the question as to whether I have the jurisdiction to hear the application. Encik Kamal, the learned Counsel for the plaintiffs, submitted that I have. He said that I have the jurisdiction by virtue of s. 142 and 145 of the NLC. Learned Counsel also referred to *Ku Yan Ku Abdullah v. Ku Idris Ku Ahmad & Ors.* [1991] 3 CLJ 2872

Puan Megalai, the learned Counsel for the first defendant, was of the same view.

Section 142 of the NLC states:

> Application for approval.
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> 142. (1) Any application for approval of the partition of any land shall be made in writing to the Land Administrator in Form 9B, and shall be accompanied by:
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> (a) such fee as may be prescribed;
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> (b) a plan of the land on a scale sufficient to satisfy the Land Administrator of all the details of the partition, together with such number of copies thereof as may be prescribed or, in the absence of any such prescription, as the Land Administrator may require;
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> (c) if it is so prescribed or, in the absence of any such prescription, if the Land Administrator so requires, a copy of any approval or consent required under para. (c) of sub-s. (1) of s. 136 (as applied by s. 141);
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> (d) all such written consents to the making of the application as are required under para. (c) of the said sub-section as so applied; and

(e) the written consent to the making of the application of any co-proprietor who has not joined therein, provided that in the case of an application made under s. 141A, such consents shall be dispensed with.

(2) Upon receiving any application under sub-s. (1), the Land Administrator shall endorse, or cause to be endorsed, a note thereof on the register document of title to the land to which it relates.

(3) In the case of an application made under s. 141A, the Land Administrator shall notify the other co-proprietors of the proposed partition, requiring them to submit in writing within a period of twentyeight days from the date of service of the notice, any objection setting out fully the grounds on which the objection is based.

(4) Upon expiry of the period specified in sub-s. (3), the Land Administrator:

(a) where there are objections, shall notify the applicant and the remaining co-proprietors and hold an enquiry at the specified time and place, and:

(i) if satisfied that good grounds exist, shall reject the application or, in the case of an application relating to the land the partition of which requires the approval of the State Director, shall recommend that the application be rejected; or

(ii) in any other case, may approve the application or (as the case may be), recommend to the State Director that the application be approved; and

(b) where there are no objections, after due consideration, may approve the application or (as the case may be), recommend to the State Director that the application be approved.

Section 145 provides:

Power of Court to facilitate termination of co-proprietorship.

145(1) Where, in the case of any land vested in co-proprietors :

(a) any of the co-proprietors will neither join in, nor consent to the making of, an application for partition under this Chapter, or

(b) by reason of the operation of para. (f) of sub-s. (1) of s. 136 (as applied by s. 141), partition of the land between all of the co-proprietors is capable of being approved under this Chapter,

the Court, subject to and in accordance with the provisions of any law for the time being in force relating to civil procedure, may, on the application of any of the co-proprietors, make such order as it may think just for the purpose of enabling the co-proprietorship to be terminated.

(2) Without prejudice to the generality of the power conferred by sub-s. (1), the Court may on application under that sub-section order:

(a) that, subject to the making between the co-proprietors of such payments as the Court may consider equitable having regard to the comparative values of the individual portions thereby proposed, any application for partition made by one or more of the co-proprietors in the terms specified in the order shall be deemed for the purposes of this Chapter to have been made by them all;

(b) that the undivided share of any of the co-proprietors be transferred on terms specified in the order to the other co-proprietors, or to any of them;

or

(c) that the land be sold.

In the present case, with respect, it is my judgment that I have no jurisdiction to make the order sought for. In my view, since it is the co-proprietors holding the **majority share** who want the land to be partitioned, they have to comply with the provisions of the NLC dealing specifically with such a situation. That provision is s. 141A read with s. 142 of the NLC. Section 141A provides:

Application for partition by co-proprietors.

141A. Notwithstanding the provisions of s. 140 and 141, a co-proprietor or co-proprietors holding the majority share in the land may apply for approval to partition the land.

The co-proprietors in question cannot make an application to Court pursuant to s. 145(1)(a). Under the provisions of s. 141A and s. 142, they have to apply to the Land Administrator in Form 9B (with the necessary modification); and in applying to the Land Administrator they are required to comply with the requirements of paras. (a), (b), (c) and (d) of s. 142(1) but, as provided by para. (e), they are not required to obtain the consent of the other co-proprietors (ie, the co-proprietors holding the minority share in the land). Once the application is submitted, it is then the duty of the Land Administrator to notify the co-proprietors, who are not parties to the application, of the application, in accordance with sub-s. (3) of s. 142. And the procedure to be followed by the Land Administrator thereafter are spelt out in sub-s. (4) of s. 142.

The learned Counsel for the plaintiffs contended that since the first defendant, as a co-proprietor, had refused to consent to the application to the Land Administrator for partition, therefore this Court has the power to entertain the present application by virtue of s. 145(1)(a). With respect, I cannot agree to this contention. In my opinion s. 145(1)(a) only refers to a situation where it

is the holder (or holders) of the **minority** share who intends to apply to the Land Administrator pursuant to s. 142 but one of the co-proprietors had refused to consent to the proposal as required by s. 142(1)(e). In such a situation, the holder of the **minority** share may apply to the Court under s. 145(1)(a).

To sum up, a co-proprietor (or co-proprietors) holding the majority share in a piece of land may only apply under s. 141A read with s. 142. Section 142, which is to be read with s. 145(1)(a), is meant only for a co-proprietor (or co-proprietors) holding the minority share in the land.

However, in *Ku Yan* the Court takes a different view. There the plaintiff who was the holder of the majority share in the land had applied to the Land Administrator to partition the land under s. 141A of the NLC. The other co-proprietors did not consent to the application. The application was rejected by the State Director of Land and Mines. The State Director did not give any reason for the rejection but advised the plaintiff to make the application before the High Court. The plaintiff thus applied to the High Court for partition purportedly under s. 145(1) of the NLC. The defendants – the co-proprietors – opposed the application on the grounds that the Court has no jurisdiction to hear the application. The learned Judge, KC Vohrah J, held that the Court has the jurisdiction and allowed the application. His Lordship ruled:

> In my view s. 141A does not compel a co-proprietor holding the majority share in a piece of land to apply to the land administrator for approval to partition the land; it is merely a permissive section, and if he elects to make such an application, s. 142(1) would apply to him bearing in mind that the land administrator would have to act in accordance with sub-ss. (3) and (4) of the section in dealing with such an application.
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> In my view too, a co-proprietor having the majority share in a piece of land thus is not barred from applying to the High Court under sub-s. (1) of s. 145 to have the co-proprietorship terminated and the land partitioned under sub-s. (2) of s. 145 on the general ground that a co-proprietor will not join in nor consent to the making of an application for partition. There is no reference in any part of Chapter 2 of Part 9 of the Code, a chapter dealing with partition of lands, that in respect of a co-proprietor holding the majority share in a piece of land he must first apply to the land administrator for partition under s. 145 before he applies to the High Court.
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> I therefore rule that I have jurisdiction to hear this application.

With the greatest respect I disagree with the above view. Whilst it is true that s. 145(1) confers on the Court the power to make an order for partition, at the same time, however, it is also important to observe that it is a limited power, that is to say, the power is confined only to the circumstances as

specified in paras. (a) and (b) of sub-s. (1). In the present case, I shall confine only to para. (a) as the instant application is purportedly made under this paragraph. It is pertinent to note that under para. (a), the power of the Court to make an order for partition only arises in a situation where **"any of the co-proprietors will not join in, nor consent to the making of, an application for partition".** This means that the co-proprietor who comes to the Court invoking para. (a) of s. 145(1) must satisfy the Court that the circumstances of his case satisfy the requirement of that paragraph. This means he has to satisfy the Court that initially he intended to apply to the Land Administrator for partition under s. 142 but was faced with the situation where he could not get the co-operation of the other co-proprietors.

However, in a case where the co-proprietor who is desirous of having the land partitioned is the holder of the majority share, such a situation can **never** arise. This is because, as I have held, he cannot apply to the Land Administrator for partition under s. 142 as if he is the holder of the minority share and thus takes steps to bring in as co-applicants, or to obtain the consent of, all the other co-proprietors; and thereafter in the event one of the co-proprietors refused to join in or to consent, to apply to the Court under s. 145(1)(a). As the holder of the majority share, he can only apply to the Land Administrator under s. 141A read with s. 142. When he applies under these provisions, he is not required to obtain the consent of the other co-proprietor(s), and I wish to reiterate that this exemption is made very clear by s. 142(1)(e). If he is so exempted, then the question of the consent of the other co-proprietor(s) does not arise. Now, if the question of consent of the other co-proprietor(s) does not arise in respect of the application of a co-proprietor who is the holder of the majority share, it follows therefore that para. (a) of s. 145(1) has no relevance to such co-proprietor.

If I may add further, it is also my respectful view that in *Ku Yan* the plaintiff, after the rejection, should not have made an application to the High Court under s. 145(1)(a). Instead, he should have appealed to the High Court against the decision of the State Director under s. 418 of the NLC.

In conclusion, I hold that a co-proprietor in a piece of land **holding the majority share** in the land, if he is desirous of having the land partitioned, he must apply to the Land Administrator pursuant to s. 141A and 142 of the NLC. For the purpose of the application, the NLC does not require him to obtain the consent of the other co-proprietor(s). If the application is rejected by the Land Administrator or the State Director (as happened in *Ku Yan*), he may come to the Court to seek redress, but it can only be done by way of

appeal to the High Court pursuant to s. 418 of the NLC. In no circumstances can he apply to the Court by way of s. 145(1)(a) of the NLC

This application is therefore dismissed with costs.

Reported by Michele Saw